

REMARKS

Claims 9-12, 18-20, 29, and 35-44 are pending in this application. There are no amendments to the claims submitted by this response.

Claims 9-12, 18-20, 35-40, and 42-44 were rejected under 35 U.S.C. § 102(b) as being anticipated by WCDMA (WCDMA for UMTS: Radio Access for Third Generation Mobile Communications) (hereinafter as WCDMA) in conjunction with 3GPP (3GPP TS 25.322 V4.4.0 (2002-03)) (hereinafter as 3GPP). Claim 29 was rejected under 35 U.S.C. § 103(a) as being unpatentable over CarTALK (Communication Architecture Deliverable D6) (hereinafter as CarTALK) in view of 3GPP, and further in view of Publication US 2003/0211846 by Nagpal et al. (hereinafter Nagpal). Claim 41 was rejected under 35 U.S.C. § 103(a) as being unpatentable over WCDMA in conjunction with 3GPP in view of AMR1 (3GPP TS 25.415 V3.7.0 (2001-06)) (hereinafter ARM1), and in further view of AMR2 (3GPP TS 26.071 V4.0.0 (2001-03)) (hereinafter ARM2).

Applicant respectfully traverses these rejections, and requests reconsideration and allowance of the pending claims in view of the following arguments.

RESPONSE TO ARGUMENTS

Applicant respectfully submits this Office Action response to further explain the distinctions of the present invention over the Examiner's cited art. On page 2 of the Office Action, the Examiner asserts that in order to reinforce the WCDMA reference more specific details as to the processes inherent to error checking and handling in a communication system are presented through the 3GPP reference. Below, Applicant has further distinguished the present invention in view of the 3GPP reference.

Rejections under 35 U.S.C. § 102

Claims 9-12, 18-20, 35-40, and 42-44 were rejected under 35 U.S.C. § 102(b) as being anticipated by WCDMA in conjunction with 3GPP.

Claim 9 is directed to a method of processing data in a receiver apparatus used in a wireless communication system, the receiver apparatus comprising a medium access control (MAC) layer and a radio link control (RLC) layer for processing data units, and the method includes "processing the data unit in accordance with one of a first manner and a second manner, the selection of one of the first manner and the second manner based upon at least an operation mode, wherein the second manner comprises checking whether a delivery of the data unit having the error has been configured and either delivering the data unit to an upper layer if the delivery of the data unit is configured or discarding the data unit if the delivery of the data unit is not configured." Applicant respectfully submits that WCDMA in conjunction with 3GPP does

not disclose the identified features of claim 9 and fails as an antedating reference for the following reasons.

WCDMA is directed to general concepts of radio interface protocols for universal mobile telecommunication system (UMTS). Specifically, WCDMA merely stated that “erroneous PDUs can be discarded or marked erroneous in TM mode”, “received erroneous data is either marked or discarded depending on the configuration in UM mode”, and “in case that RLC is unable to deliver the data correctly the upper layer is notified and the RLC SDU is discarded in AM mode”. However, as previously submitted, WCDMA is unclear as to when such erroneous PDU is discarded and when and how it is “marked”. Additionally, the definition of “marked” is neither clear nor easily understood by those skilled in the art.

In contrast, claim 9 discloses the limitation “wherein the second manner comprises checking whether a delivery of the data unit having the error has been configured and either delivering the data unit to an upper layer if the delivery of the data unit is configured or discarding the data unit if the delivery of the data unit is not configured.” Specifically, the second manner comprises either delivering the data unit to the upper layer or discarding the data unit based upon a determination of whether the delivery of the RLC data unit having the error has been configured.

WCDMA fails to teach or suggest any details as to specifically when and specifically how to implement the broad concepts of merely discarding or “marking” erroneous PDUs. Also, even if it is assumed that some details are taught, the method disclosed in WCDMA is not sufficient to anticipate the Applicant’s claimed invention. In clear contrast, Applicant’s claimed invention, as previously amended in claim 9,

provides specific details as to when and how erroneous data units are to be handled by the RLC layer (entity). Namely, Applicant's claimed invention includes the limitation "second manner comprises checking whether a delivery of the data unit having the error has been configured and either delivering the data unit to an upper layer if the delivery of the data unit is configured or discarding the data unit if the delivery of the data unit is not configured."

For at least the reasons stated above, Applicant's respectfully submit that claim 9 is patentable over the WCDMA reference.

Page 4 of the Office action indicates that the use of the 3GPP reference in conjunction with the WCDMA for a multiple reference 35 U.S.C, 102(b) is to prove the primary reference WCDMA is enabling and further describe the inherency of characteristics of WCDMA.

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) MPEP 2112 (IV). "To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991).

As submitted above, WCDMA teaching of “configuration” is sufficient to anticipate the limitations of claim 9. The Examiner’s reliance on 3GPP to teach or disclose the missing characteristic or functionality of WCDMA fails because, as explained above, even if the cited references are combined as suggested the invention of independent claim 9 would not be achieved with regard to “the second manner comprises either delivering the data unit to the upper layer or discarding the data unit based upon a determination of whether the delivery of the RLC data unit having the error has been configured.”

Applicant respectfully notes that the Examiner cites 3GPP TS 25.322 V4.4.0 (2002-03), however this reference does not disclose *configuration of delivery of data units*. Further research revealed that 3GPP TS 25.322 V4.9.0 (2003-06) teaches the asserted disclosure asserted on page 5 of the Office Action, and that the V4.9.0 (2003-06) publication date is June 2003. Therefore, the foreign priority date of instant application (i.e., effective filing date of the Korean patent application, April 1, 2003) predates the publication date which the Examiner’s reliance is based on for the 3GPP reference. Therefore, the reference in regards to 3GPP paragraph 10.4 should be withdrawn because the reference is predated by the priority document, and that the configuration function missing from WCDMA has not been made clear that it was present at the time the foreign priority document was filed. Enclosed herewith is a certified translated copy of the foreign priority document, Korean Patent Application Serial No.: 10-2003-0020533, provided in order to support the claimed priority date. Also enclosed are relevant sections of the 3GPP TS 25.322 V4.9.0 (2003-06) reference.

Applicant acknowledges that a reference may be submitted to establish inherency of a characteristic of a primary reference. But herein the WCDMA in conjunction with 3GPP fails to teach or suggest the “configuration” characteristic as disclosed in independent claim 9, with regards to discloses configuration of delivery of data units.

3GPP is directed to a Radio Link Control (RLC) protocol specification. As previously submitted, even though page 3 of the Office Action indicates that 3GPP discloses a manner of handling data unit by checking for a “no”, “yes”, and “no detect” in order to determine how to process the data unit, such handling manner can not be equated to the novel feature of applicant’s claimed invention regarding “checking whether a delivery of the data unit having the error has been configured”. In fact, the “delivery of Erroneous SDUs” of 3GPP is always configured, and the data unit is processed based on the result, i.e., yes, no, and no detect of the configuration.

In contrast, the invention of independent claim 9 determines whether a delivery of the data unit having the error has been configured or not, then selectively processes “delivering” or “discarding” the data unit based on the configuration determination. Therefore, 3GPP also fails to teach or suggest the novel features of applicant’s claimed invention regarding “second manner comprises checking whether a delivery of the data unit having the error has been configured and either delivering the data unit to an upper layer if the delivery of the data unit is configured or discarding the data unit if the delivery of the data unit is not configured.”

For the reason stated above, Applicant respectfully submits that independent claim 9 is allowable over WCDMA in conjunction with 3GPP.

Independent claim 20 recites similar limitations as claim 9 with regard to “wherein the second manner comprises checking whether a delivery of the data unit having the error has been configured and either delivering the data unit to an upper layer if the delivery of the data unit is configured or discarding the data unit if the delivery of the data unit is not configured.” Therefore, for reasons similar to the arguments for claim 9, in regards to the above-cited limitations, Applicant submits that independent claim 20 is also allowable over WCDMA in conjunction with 3GPP.

Independent claim 35 recites limitation similar to independent claim 9 in regards to the configuration limitation and includes a method of processing data by a radio link control (RLC) entity. The method includes “wherein the first manner is performed when the RLC entity is in non-transparent mode, such that the RLC data unit is discarded,” and “wherein the second manner is performed when the RLC entity is in transparent mode, and comprises determining whether a delivery of the RLC data unit having the CRC error has been configured, such that the RLC data unit is either further processed or discarded based on the determining step.” Therefore, for reasons similar to the arguments for claim 9, in regards to the “determining whether a delivery of the RLC data unit having the CRC error has been configured, such that the RLC data unit is either further processed or discarded based on the determining step” limitations, Applicant submits that independent claim 20 is also allowable over WCDMA in conjunction with 3GPP.

Accordingly, dependent claims 10-12, 18, 19, 36-40, and 42-44 are believed to be allowable at least by virtue of their respective dependence from independent claims 9, 20, and 35.

Rejections under 35 U.S.C. § 103

Claim 29 was rejected under 35 U.S.C. § 103(a) as being unpatenable over CarTALK in view of 3GPP, and further in view of Nagpal.

Independent claim 29 teaches a method of processing data in a receiver apparatus used in a wireless communication system, the receiver apparatus comprising a physical layer and a medium access control (MAC) layer for processing data units, and the method includes “checking whether a delivery of the data unit having the error has been configured, and either delivering the data unit to an upper layer when the delivery of the data unit is configured or discarding the data unit when the delivery of the data unit is not configured, if the header information is not present.”

The Examiner asserts on page 11 of the Office Action, that CarTALK teaches some of the limitations of claim 29, but fails to teach the limitation “examining the data unit for presence of header information associated with a MAC header,” “discarding the data unit if the header information is present,” and “checking whether a delivery of the data unit having the error has been configured, and either delivering the data unit to an upper layer when the delivery of the data unit is configured or discarding the data unit when the delivery of the data unit is not configured, if the header information is not present.”

However, the Examiner relies on 3GPP and Nagpal to cure the deficiencies of CarTALK. Applicant respectfully submits that 3GPP fails to cure the deficiencies of CarTALK and fails as an anticipating reference for the following reasons.

As previously stated, Applicant respectfully notes that 3GPP TS 25.322 V4.4.0 (2002-03) does not disclose *configuration of delivery of data units*. However, further research revealed that 3GPP TS 25.322 V4.9.0 (2003-06) teaches the asserted disclosure asserted on page 5 of the Office Action, and that the V4.9.0 (2003-06) publication date is June 2003. Therefore, the foreign priority date of the instant application (i.e., effective filing date of the Korean patent application, April 1, 2003) predates the publication date which the Examiner's reliance is based on for the 3GPP page 55, section 10.4, line 4 reference with regard to configuration.

Applicant assumes that the Examiner cites the 3GPP reference as an anticipating prior art reference and not to prove an inherent characteristic as on page 5 of the Office Action. Therefore, 3GPP fails to cure the deficiencies of CarTALK with regard to 3GPP page 55, section 10.4, line 4.

Applicant respectfully submits that the above-identified claim limitations are similar to the limitation of independent claim 9, that is with regard to "checking whether a delivery of the data unit having the error has been configured, and either delivering the data unit to an upper layer when the delivery of the data unit is configured or discarding the data unit when the delivery of the data unit is not configured, if the header information is not present." Therefore, for the reasons above with regard to independent claim 9 and because the cited combination of references fails to cure the deficiencies of CarTALK, Applicant believes independent claim 29 is allowed over the cited combination of references.

Applicant submits that Nagpal fails to cure the previously identified deficiencies of CarTALK and 3GPP, therefore claim 29 is allowable over CarTALK in view of 3GPP

and further in view of Nagpal. Even if one skilled in the art were to combine the references as asserted, claim 29 would still be allowable.

Claim 41 was rejected under 35 U.S.C. § 103(a) as being unpatentable over WCDMA in conjunction with 3GPP in view of AMR1 and in further view of AMR2. Applicant respectfully submits that AMR1 and AMR2 fail to cure the previously identified deficiencies of WCDMA and 3GPP with respect to “determining whether a delivery of the RLC data unit having the CRC error has been configured, such that the RLC data unit is either further processed or discarded based on the determining step” limitations so independent claim 41 is allowable over the cited combination of references.

For the reasons stated above with regards to independent claim 35, from which claim 41 depends, Applicant respectfully submits that claim 41 is allowable at least by virtue of dependence from independent claim 35.

Conclusion

In view of the foregoing, it is respectfully submitted that the application and the claims are in condition for reconsideration on the merits, thus reexamination of the application is requested. The Examiner is invited to call the undersigned attorney at (213) 623-2221 should the Examiner believe a telephone interview would advance the prosecution of the application.

Respectfully submitted,

Lee, Hong, Degerman, Kang & Schmadeka

Date: February 19, 2008

By: /Vernon R. Yancy/
Vernon R. Yancy, Esq.
Registration No. 52,379
Attorney for Applicant(s)

Customer No. 035884

ENCLOSURES